

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 23 of 2005

RAMESHWARLAL
V/S
BADRILAL

Mr. MANISH SHISODIA, for the appellant / petitioner

Mr. HIMANSHU MAHESHWARI, for the respondent

Date of Order : 18.12.2006

HON'BLE SHRI N P GUPTA, J.

ORDER

Heard learned counsel for the appellant and perused the impugned judgment.

Both the learned courts below have found that the plaintiff has established his reasonable and bonafide necessity, and that plaintiff has a shop and in his own residential house, he is carrying on business of goldsmith and thus, the aspect of comparative hardship has also been decided in favour of the plaintiff. In such circumstances, I do not find any error in the findings recorded by the learned courts below, which are pure finding of fact, and are not vitiated on any of the grounds available under Section 100 CPC.

It was sought to be contended that the conclusion of the learned lower appellate court about shop being there in the plaintiff's house is an out-come of misreading, and DW-2 had not deposed so. I closely read the statement and

find no misreading at all.

The appeal thus does not involve any substantial question of law. The same is, therefore, dismissed summarily.

At the request of the learned counsel for the appellant, the appellant is given one years' time to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decretal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA), J.

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